[illegible]

[illegible] by whose direction [illegible] was fine, without wind, and the Channel in its usual state [illegible] so that the points for the determination of the Court [illegible]

First.—Does the Law of [illegible] Masters of Ocean Vessels navigating between Quebec and Montreal, to take Pilots?

Second.—In case of a Pilot being on board and in charge of the Vessel, are the owners [illegible] by Law, discharged from liability in cases of collision?

Third.—Or, is it not necessary for the owner or Master, pleading exemption from liability, to allege and prove in order to exonerate themselves that the collision was caused by the fault or incapacity of the Pilot in charge?

As to the first point, the provisions of Law so far as enacted by the Legislature of the Province will be found in the following Statutes:—

45 Geo. III, cap. 12, Sections 6, 12.
2 Vict. cap. 19, " 12, 17.
12 Vict. cap. 114, " 11, 53, 54, 60.
12 Vict. cap. 117, " 6, 14, 18, 21, 41.
13 and 14 Vict. cap. 98.
14 and 15 Vict. cap. 101.

The Imperial Pilotage Acts to which reference may be made are the following:—

52 Geo. III, cap. 39.
6 Geo. IV, cap. 125.
Merchant Shipping Act of 1854.

The L. C. Act of 1805, 45th Geo. III, cap. 12, sect. 1 incorporates "The Master, Deputy Master and Wardens of the Trinity House of Quebec," three out of the seven persons mentioned to be residents of *Montreal*; and enacts (sect. 6) that it shall be lawful for the Governor to appoint, by warrant "or licence under his hand and seal at arms, fit and proper persons to be "Branch Pilots *for and below the Harbour of Quebec*, and other fit and proper persons to be "Branch Pilots *for and above the said Harbour*;" and (by sect. 12) "that if the Master of "any Ship or Vessel coming to the *Harbour of Quebec*," (except coasting Vessels or River Craft, &c., mentioned in the proviso,) "not having on board a Pilot, shall refuse "to receive on board and employ any Branch Pilot who shall offer to go on board, and "serve as such in the River St. Lawrence, the Master of such Vessels shall pay to such "Branch Pilot half Pilotage to the Harbour of Quebec, from the place at which such Pilot "shall have so offered. Provided always that no Master of any coasting Vessel or River Craft, "when employed within any part of the Gulf or River St. Lawrence, or when bound to or from "the Labrador Fisheries, shall be obliged to take or receive on board a Pilot, anything herein "contained to the contrary, notwithstanding."

The 2 Vict. cap. 19, amended the previous Act of 1805, and incorporated "The Master, "Deputy Master and Wardens of Trinity House of *Montreal*," with jurisdiction from Port Neuf upwards, and with power (sect. 6) to make By-laws, amongst other things, "for the "government and regulation of the Pilots *for and above the Harbour of Quebec*." This Statute (sect. 10) imposed a penalty of £20 on any person, not being a Pilot, acting as such, and a penalty of £10 on any Branch Pilot, acting as such, whilst suspended and deprived of his Branch.

The 12 Vict. cap 114 is the first Act that enacted (sect. 53) "that the Master of each "Vessel *leaving the Port of Quebec for a Port out of this Province* shall take a Branch Pilot "to conduct such Vessel under a penalty equal to the Pilotage of the Vessel, which penalty "shall go to the decayed Pilots fund," and (by sect. 54) "That the Master of every Vessel "coming from a Port *out of the Province*, and not having a Branch Pilot on board, shall, on "entering the *Port of Quebec*, under a penalty of £10, hoist the Union Jack at the fore top-"mast head, and have it so hoisted every day, from day light to dark, until boarded by a

[illegible]

[illegible] "Master, engineer, or [illegible] Pilot, and no one employing him to exhibit his [illegible] Pilot, nothing as such; [illegible] Pilot; but they [illegible] "that the employment of [illegible] "Pilots shall continue to be compulsory," and imposes a penalty "on every Master who, either [illegible] "employing or continuing in employ an unqualified person as Pilot has." Not done in like the [illegible] "shall employ a qualified pilot to pilot the ship, and if he fail so to do, he shall for every [illegible] "offence, forfeit a penalty not exceeding £100." It may be mentioned further, that the By-laws of the Trinity House, Montreal, now in force, adopted 2nd April, 1858, and sanctioned under the Act passed in the 3rd May, 1859, do not cause or even to mention compulsory pilotage, although numerous regulations are therein made respecting Pilots.

It is unnecessary, therefore,—

That by the Provincial statutes, pilotage is not compulsory for the part of the St. Lawrence in question. And,

That the Imperial legislation respecting pilotage has never been in force in Canada.

This view is sustained by the Honorable Mr. Blackburn, Queen's Proc. Admiralty Court, page 195.

The general Imperial Act is dated 6 Geo. IV. "The Merchant Shipping Act of 1854," is divided into three parts, the part regarding the pilotage being the fourth part. The first clause of that part (which contains all the Act) is in the following words: "The 4th part of this Act shall extend to the United Kingdom only." In the same 4th part in the following section, which contains the general enactments, was constituted to the United Kingdom only, and which enacts as follows in Canada, by the Queen, without express legislation on the subject:

"Sect. 388.—No Owner or Master of any Ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified Pilot "acting in charge of such a Ship, within any district where the employment of such Pilot is "compulsory by law."

The analogous provision in the 55th section of the previous English Statute, 6 Geo. IV., chap. 125, may be also quoted, as the sense is to be found in the books turn chiefly on the provisions of this section:

"Sect. 55.—Neither an Owner or Master of any Ship or Vessel shall be answerable to any "person or persons whatsoever, from or by reason of any neglect, default, incompetency or "incapacity of any licensed Pilot acting in charge of any such Ship or Vessel, under or in "pursuance of any of the Provisions of this Act, where and so long as such Pilot shall be "duly qualified to have charge of such Ship or Vessel, or where or so long as no duly qualified "Pilot shall have offered to take charge thereof."

APPENDIX.

No. 1.

COPY OF JUDGMENT.

The [illegible] September, 185[illegible].

PRESENT:

The Honorable Mr. Justice [illegible].

"The Court having heard the parties by their Counsel upon the merits of this cause, examined the proceedings and evidence of Record, and having deliberated thereon, [illegible] of which the Pilot in charge would have been [illegible] the said Court doth dismiss the said Action with costs."

MONK, COFFIN & PAPINEAU,
P. S. C.

No. 2.

COPY OF NOTES OF EVIDENCE OF ROBERT FORSYTH.

"He is not related, allied, or of kin in any way of the parties in this cause. He is not interested in the event of this suit. Knows the parties; is Engineer of the Harbour under the Plaintiffs. Knows the limits of the Harbour of Montreal, the Island wharf is within those limits, and lies opposite the Custom-House of Montreal, and extends perhaps about one hundred and fifty yards from the Revetment wall into the River. Recollects the Steamer North American striking the said Island wharf on the 26th of October, 1858. Did not see the actual collision but came there a few minutes afterwards. The Vessel was still at the said wharf. Found that a considerable part of the piling of the wharf was broken and the anchor of the Vessel was hanging over the bow broken; it had come in contact with the wharf and torn it up. Had the anchor not been hanging there, no damage would have happened, as the wharf was sufficiently good to resist the lateral pressure. She came on in that way and scraped the wharf; the anchor scraped the wharf a considerable distance before it caught a pile, and did other damage for a considerable distance—twenty or thirty feet. He mentioned it at the time. He immediately reported the collision to the Plaintiffs and was instructed to repair the damage caused to the wharf, by reason of the collision—which he did. The persons employed in the repairs were paid, as well as the materials, by the Plaintiffs, and the works were made under his superintendence, and are set forth in detail in the Plaintiffs' Exhibit No. 1, fyled in this cause, amounting in all to the sum of £88 10s. 2d. This sum was expended to put the wharf in the condition it was before. The said Exhibit was made out and certified by witness himself, before the same was paid. The prices charged are the cost prices without any charge for superintendence. The water was one foot over the usual summer level. The weather was fine and the Channel clear. Saw the Iron Duke move out of the way; if she had not done so, she would have been crushed. There is no doubt that with proper care and management, the Steamer could have passed up to her berth without any collision. There is a Channel from the red buoy which lies some two or three hundred yards below the wharf in a direct Channel and is sufficiently wide to allow a Vessel of that size to pass up and another to pass down without difficulty, for Vessels of the class of the *North American*. It is of 200 feet wide at the narrowest place."

CROSS-EXAMINED.

"Witness believes there was a Pilot in charge of the Steamer at the time the collision took place. She was on her way to her berth at that time. The Island wharf projects slightly into the stream. When witness spoke of the payment of the several items of the account, Plaintiffs' Exhibit No. 1, he did not mean to say that the money passed through his hands. An account similar to that produced was certified by him and paid through the Plaintiffs' Office. Was not present at the payment of all the items of that account. Believes he saw two of the items paid: item of £24 0s. 9d. and item £1 6s. 3d. Witness never saw two Ocean Steamers cross each other in the Channel opposite the Island wharf. Can speak positively as to the day the collision took place."

[illegible]

[illegible]

[illegible]